

### **REMARKS**

Claims 2-8 and 10-14 are pending. No new matter has been added by way of the present amendments. For instance, claims 2 and 3 have been amended to cite “in a synergistically effective amount” as supported by originally filed claim 1. Moreover, claim 3 has been amended to depend upon claim 2. No new matter has been added by way of these amendments and no new issues have are raised which would require additional search and/or consideration on the part of the Examiner. In particular, claim 1 was already considered to the extent that it read upon synergistically effective amounts. Thus, this limitation has already been considered by the Examiner. In the event that the present submission does not place the application into condition for allowance, entry thereof is respectfully requested as placing the application into better form for appeal.

### **Unentered Examiner’s Amendment**

Applicants’ representatives had discussions with the Examiner in June of 2006. The Examiner had previously indicated that the present application would be in condition for allowance if claims 2 and 3 were amended to insert the phrase “in a synergistically effective amount” to the end of these claims. The Examiner was authorized to insert this limitation into claims 2 and 3. Accordingly, it was Applicants’ understanding that the application would be in condition for allowance.

However, the Office Action dated August 10, 2006 makes no mention of this Examiner’s Amendment. Further, the Examiner indicates at page 5, second last full paragraph of the outstanding Office Action that claims 2 and 3 are not allowable because the synergistic data has

been disclosed in the specification but not mentioned in the claims. It was Applicants' understanding that this had been cured by the Examiner's Amendment, however, it appears as though the Examiner has forgotten to enter the Examiner's Amendment and rather issued a Final Office Action.

Applicants have attempted to rectify this issue by discussions with the Examiner, but to no avail. Accordingly, the present amendments are being filed in order to obtain entry of the Examiner's Amendment previously discussed and authorized in June 2006.

**Issues under 35 U.S.C. §103(a)**

The Examiner has rejected claims 2-8 and 10-14 under 35 U.S.C. §103(a) as being obvious over GB 857,388, C2002-041978 (abstract, SUMITOMO) and U.S. Patent 6,369,093.

Applicants respectfully traverse.

Applicants respectfully submit that claims 2 and 3 include a mixture of specific compounds in a synergistically effective amount. As such, based upon the Examiner's comments at page 5, lines 12-18, this objection is moot. Reconsideration and withdrawal thereof are respectfully requested.

**Continued Request for Initialed Information Disclosure Statements (IDS)**

As outlined in previous responses (for instance, see pages 6-7 of the Amendment dated May 26, 2006 and pages 5-6 of the Amendment dated December 13, 2006), Applicants have made two requests for the Examiner to properly consider Information Disclosure Statement and

the references cited therein of December 8, 2004. The Examiner has not addressed these requests.

To summarize, Applicants submit that it is unnecessary for the Examiner to initial DE 1984332-A1 or EP 054099, since the U.S. counterparts U.S. Pat. 3,000,780 and U.S. Pat. 5,330,995 respectfully, were already initialed. However, Applicants still require that the Examiner properly consider JP 2001/302605-A. To this end, Applicants have even provided the Examiner with a replacement copy of this reference along with its corresponding English abstract (see the Response of December 13, 2005).

Accordingly, the Examiner is respectfully requested to properly consider JP 2001/302605-A. This represents the third request (not including the initial correct submission of the Information Disclosure Statement) for the Examiner to consider this reference.

Based upon the above, Applicants submit that the present application is in condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw all rejections and allow the currently pending claims.


**CONCLUSION**

If the Examiner has any questions or comments, please contact Craig A. McRobbie, Registration No 42,874 at the offices of Birch, Stewart, Kolasch & Birch, LLP.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

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Respectfully submitted,

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